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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**GOOGLE'S REQUEST FOR A JURY
INSTRUCTION THAT IT HAS NO DUTY
TO DEAL**

Judge: Hon. James Donato

1 Because Google has no duty to distribute app stores through the Google Play store, this
 2 Court granted Google’s motion for summary judgment on “plaintiffs’ claim that Google
 3 unlawfully prohibits the distribution of other app stores on Google Play.” MDL ECF No. 700 at 1.
 4 The Court further held that Epic “may not *argue or suggest* that § 4.5” of Google’s Developer
 5 Distribution Agreement—the policy that prohibits developers from distributing app stores through
 6 the Google Play store—“is unlawful either on its own or in combination with other alleged
 7 practices.” *Id.* (emphasis added).

8 Despite that instruction, during trial on November 8, Epic’s counsel *twice* asked a Google
 9 witness whether Google “*refuses* to distribute third party app stores on Google play.” Trial
 10 Transcript, 743:16-22 (Nov. 8, 2023) (emphasis added). When the witness explained that the
 11 policy was motivated by Google’s desire to keep users safe, Epic’s counsel responded that he
 12 would get to this “*so-called* safety reason,” and continued: “In fact, it’s one of the requirements
 13 that a developer cannot distribute an alternative app store through Google Play, correct?” *Id.*
 14 744:1-3 (emphasis added). The questioning was argumentative and suggested to the jury that
 15 Google’s refusal to deal was unlawful.

16 But the law is clear. Google has no duty to deal. *Verizon Communications v. Trinko*, 540
 17 U.S. 398 (2004); *FTC v. Qualcomm Inc.*, 969 F.3d 974, 993 (9th Cir. 2020). Because Epic has
 18 now suggested to the jury that Google has a duty to distribute rival app stores, a jury instruction is
 19 necessary. Accordingly, Google requests that the Court instruct the jury as follows:

20 **Duty to Deal**

21 You have heard evidence that Google’s Developer Distribution
 22 Agreement prohibits the distribution of other app stores through the
 23 Google Play store. I instruct you that it is not unlawful for Google to
 24 prohibit the distribution of other app stores through the Google Play
 25 store, and you should not infer or conclude that doing so is unlawful
 26 in any way.
 27
 28

1 DATED: November 9, 2023

Respectfully submitted,

2 By: /s/ Glenn D. Pomerantz

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